Rulings on divorce and connected matters in the Qur'aan

Allaah says (interpretation of the meanings):

"O Prophet! When you divorce women, divorce them at their 'Iddah (prescribed periods) and count (accurately) their 'Iddah (periods). And fear Allaah your Lord (O Muslims). And turn them not out of their (husband's) homes nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse. And those are the set limits of Allaah. And whosoever transgresses the set limits of Allaah, then indeed he has wronged himself. You (the one who divorces his wife) know not it may be that Allaah will afterward bring some new thing to pass (i.e. to return her back to you if that was the first or second divorce)"

[al-Talaaq 65:1]

"O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no 'Iddah [prescribed period following divorce] have you to count in respect of them. So give them a present, and set them free (i.e. divorce) in a handsome manner"

[al-Ahzaab 33:49]

"And divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal what Allaah has created in their wombs, if they believe in Allaah and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And they (women) have rights (over their husbands as regards living expenses) similar (to those of their husbands) over them (as regards obedience and respect) to what is reasonable, but men have a degree (of responsibility) over them. And Allaah is All-Mighty, All-Wise.

The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back (from your wives) any of your Mahr (bridal-money given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allaah (e.g. to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allaah, then there is no sin on either of them if she gives back (the Mahr or a part of it) for her Al-Khul' (divorce). These are the

limits ordained by Allaah, so do not transgress them. And whoever transgresses the limits ordained by Allaah, then such are the Zaalimoon (wrongdoers).

And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband…"

[al-Baqarah 2:228-230]

"And those of your women as have passed the age of monthly courses, for them the 'Iddah (prescribed period), if you have doubt (about their periods), is three months; and for those who have no courses [(i.e. they are still immature) their 'Iddah (prescribed period) is three months likewise, except in case of death]. And for those who are pregnant (whether they are divorced or their husbands are dead), their 'Iddah (prescribed period) is until they lay down their burden"

[al-Talaaq 65:4]

"And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten days"

[al-Baqarah 2:234]

From these aayahs we learn many rulings on divorce, reconciliation and 'iddah (waiting period). First and foremost, Allaah urges men to keep their wives and to be patient with them, because there may be much good in that. This indicates that Allaah loves harmony between spouses and dislikes separation. These aayahs indicate that divorce is permissible, and that it is one of the blessings that Allaah bestows upon His slaves, for it wards off a great deal of harm and hardship when necessary.

At the same time, Allaah commands His slaves, if they want to divorce, to adhere to the limits of sharee'ah which are in their best interests, both spiritual and worldly, and to *divorce them at their 'Iddah (prescribed periods).* The Prophet SAWS (peace and blessings of Allaah be upon him) interpreted this as meaning that they should be pure and not menstruating, and that no intercourse should have taken place during that period of purity. Thus the divorced woman will be in her 'iddah and it will be known that divorce is permitted at that time. The same applies if she is divorced after pregnancy has become apparent. This indicates that divorce when a woman is menstruating or during a period of purity when intercourse has taken place but pregnancy is not apparent, is

haraam. Also, it is not permitted for a man to divorce a woman more than once (at one time), because Allaah says (interpretation of the meaning):

"And treat not the Verses (Laws) of Allaah as a jest"

[al-Baqarah 2:231]

Allaah does not mention any specific phrases by which divorce takes place. This indicates that everything which could be understood as meaning divorce, explicitly or implicitly, if the intentions or circumstances indicate that, means that divorce has taken place.

The aayah indicates that the divorce which is revocable is the first or second talaaq (divorce); if the husband divorces his wife for the third time, she is no longer permissible for him, unless she marries another husband, in a genuine marriage in which he has intercourse with her, then he divorces her and she waits out the 'iddah following that divorce. The phrase "*until she has married another husband*" [al-Baqarah 2:230 – interpretation of the meaning] indicates that *nikaah al-tahleel* (a marriage of convenience to let a woman re-marry her former husband) is haraam, because it is not a shar'i marriage and does not have the effect of making the woman permissible for her former husband.

The phrase "*And their husbands have the better right to take them back in that period*" [al-Baqarah 2:228 – interpretation of the meaning] indicates that the divorced woman whose divorce is revocable (first or second talaaq) is a wife who comes under the same rulings as other wives in all aspects, except that she does not have a share of her husband's time [in the case of plural marriage]. The husband may take her back whether she likes it or not, because he has the right to do so, but Allaah has set out certain conditions for taking her back:

1- The divorce should be talaaq [not another kind of divorce]. If it is any kind of annulment, then he cannot take her back, because Allaah says (interpretation of the meaning): *"And divorced women [al-mutallaqaat, i.e., women divorced by talaaq]…" [al-Baqarah 2:228]*

2- It should be a first or second talaaq, because Allaah says (interpretation of the meaning): *"The divorce is twice" [al-Baqarah 2:229]*, i.e., revocable divorce. Then Allaah clearly states that if the husband divorces her again, she is not permissible for him unless she marries another husband.

3- That it should take place within the ‘iddah, because Allaah says (interpretation of the meaning): *“And their husbands have the better right to take them back in that period” [al-Baqarah 2:228]*.

4- That by taking her back, the husband should not have the intention of harming her; he should be meaning to bring her back to a real marriage.

5- Divorce (talaaq) should not be given in return for some compensation. If some compensation is given, then it is khul’ or something similar. Allaah calls khul’ a ransom; if the husband has the right to take the wife back, then there is no ransom in that case.

6- Divorce cannot take place before consummation, because Allaah says (interpretation of the meaning): *“O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no ‘Iddah [prescribed period following divorce] have you to count in respect of them” [al-Ahzaab 33:49]*. This aayah indicates that divorce (talaaq) can only take place after the nikaah (marriage). If a man lays down a condition that if he marries a woman he will divorce her (immediately), this is not a real divorce. If a man divorces a woman to whom he is not married, this is not a real divorce.

This also indicates that if separation occurs before the marriage has been consummated, there is no ‘iddah in this case. After the marriage has been consummated, if the woman menstruates, her ‘iddah is three complete menstrual cycles after the divorce has taken place. The apparent meaning of the aayah is that this applies no matter how long or short her menstrual cycle is. If the woman is very young or does not have periods, or if she is post-menopausal, then her ‘iddah is three months. If she is pregnant, her ‘iddah lasts until she gives birth. If it is not clear whether she is pregnant or not, if she previously menstruated and has not yet reached menopause, then she should wait for nine months to be on the safe side as far as pregnancy is concerned, then she should wait out an ‘iddah of three months.

In the case of a woman whose husband dies, if she is pregnant, her ‘iddah lasts until she gives birth. If she is not pregnant, it is four months and ten days, to be on the safe side in case she is pregnant.

The phrase *“there is no sin on you for that which they do of themselves” [al-Baqarah 2:240 – interpretation of the meaning]* refers to the grief felt by the woman whose husband has died. So during the period of her ‘iddah, she puts

aside anything that has to do with married life, such as beautiful clothes, jewellery, perfume, kohl, henna etc., as is narrated in detail in the Sunnah.

Allaah says (interpretation of the meaning):

“And there is no sin on you if you make a hint of betrothal or conceal it in yourself…”

[al-Baqarah 2:235]. The hinting to which Allaah attaches no blame is only in cases where a woman is irrevocably separated, whether by her husband’s death or a third talaaq or an annulment of the marriage. Clearly stating a marriage proposal is not permitted, but statements which may mean a marriage proposal or may mean something else are OK. But if a woman has been divorced by revocable talaaq, then it is not permissible to propose marriage to her, whether clearly or by hinting, because she still comes under the rulings of wives. This aayah also indicates that it is haraam to enter into a marriage contract with a woman who is still in her ‘iddah, because if it is haraam to propose to her, it is more so to draw up the marriage contract. If this takes place, the contract is invalid.

With regard to maintenance of the divorced woman during her ‘iddah, if it is a revocable divorce, then she is entitled to that, because Allaah described her as a wife and her husband has more right to her. She has the same rights of maintenance, clothing and accommodation as other wives.

In cases where a woman is irrevocably separated from her husband, if she is pregnant then she has the right to maintenance because of her pregnancy, because Allaah says (interpretation of the meaning):

“And if they are pregnant, then spend on them till they lay down their burden” [al-Talaaq 65:6]

If she is not pregnant, it is not obligatory to give her maintenance and clothing.

Maintenance of a woman who is breastfeeding is obligatory on the father of the child. If the mother is still married to the father, then the maintenance of the wife includes the maintenance for breastfeeding, because Allaah says (interpretation of the meaning):

“but the father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis” [al-Baqarah 2:233]

He is not obliged to provide anything else, but if she is not married to him, he has to pay her for breastfeeding, because Allaah says (interpretation of the meaning):

“Then if they give suck to the children for you, give them their due payment” [al-Talaaq 65:6]

And Allaah commands that

“No mother shall be treated unfairly on account of her child, nor father on account of his child” [al-Baqrah 2:233 – interpretation of the meaning].

This includes any kind of harm or unfair treatment.

The aayah (interpretation of the meaning),

“And on the (father’s) heir is incumbent the like of that (which was incumbent on the father)” [al-Baqarah 2:233] indicates that that it is an obligation for the relative of the father, who has a right to inheritance from him, to provide for the mother if necessary. The latter condition is not affected by whether or not the relative will actually inherit from the father or not due to the rules of inheritance as affected by children, etc.; it is determined only by whether or not the relative is of a relation that can inherit. If so, then they are obliged to provide for the mother, in the case the father himself cannot.

The aayah (interpretation of the meaning):

“*then there is no sin on either of them if she gives back (the Mahr or a part of it) for her Al-Khul‘ (divorce)” [al-Baqarah 2:229]* includes permission for khul’ when there is the fear that the spouses will not adhere to the limits set by Allaah. It is permitted whether the amount of money involved is large or small. It is a ransom, and is not a kind of talaaq (divorce), and there is no possibility of going back to the husband (it is irrevocable).

The aayah (interpretation of the meaning):

“And for divorced women, maintenance (should be provided) on reasonable (scale)” [al-Baqarah 2:241] includes all divorced women. Whoever divorces his wife (by talaaq) should maintain her as much as he can afford. This is the best kind of good treatment and noble good manners, because in such cases the woman is likely to be broken-hearted and usually has little wealth of her own.

This is not obligatory except in cases where a man has divorced a woman before consummation of the marriage and has not given her the mahr.

Allaah commands the husband to either take them back on reasonable basis or set them free on reasonable basis (cf. 2:231). This is so as to avoid any bad consequences and to keep peace between the two sides and so that the in-laws may remain on friendly terms. Thus life will remain stable, free from upsets. Is there any better than this ruling for a people who believe?

The two aayahs (interpretation of the meanings):

"The mothers shall give suck to their children for two whole years' [al-Baqarah 2:233]

and

"and the bearing of him, and the weaning of him is thirty months" [al-Ahqaaf 46:1] indicate that the shortest possible period of pregnancy is six months, because if you take away two years from thirty months, you are left with six months of pregnancy.

Allaah says (interpretation of the meaning);

"Those who take an oath not to have sexual relation with their wives must wait for four months, then if they return (change their idea in this period), verily, Allaah is Oft-Forgiving, Most Merciful.

And if they decide upon divorce, then Allaah is All-Hearer, All-Knower" [al-Baqarah 2:226-227]

This aayah contains the ruling on *al-'Eelaa'*, which is an oath sworn by the husband never to have intercourse with his wife again, or not to do so for a period that exceeds four months. If the wife demands her right to intercourse, and he refrains because of his vow, she should set him a time limit of four months. Then he should either have intercourse with her and offer expiation for his vow, or he should divorce her. It is understood from the meaning of the aayah that if the husband refrains from doing his marital duty in bed, or intercourse, or (his duties of) maintaining, clothing, providing accommodation, etc., with no excuse for failing to do it, and his wife insists on this right, then she has the right to have the marriage annulled.

Allaah says (interpretation of the meaning]:

“And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allaah that he is one of those who speak the truth.

And the fifth (testimony should be) the invoking of the Curse of Allaah on him if he be of those who tell a lie (against her).

But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allaah, that he (her husband) is telling a lie.

And the fifth (testimony) should be that the Wrath of Allaah be upon her if he (her husband) speaks the truth

[al-Noor 24:6-9]

Allaah states that whoever accuses anyone else of zinaa is subject to the punishment for slander, which is eighty lashes, if he does not produce four witnesses. But He makes an exception in the case of the man who accuses his wife of zinaa and she denies it. In this case he has to bear testimony four times that he is telling the truth in what he is accusing her of, and when he bears testimony for the fifth time, he must invoke the curse of Allaah upon himself if he is lying. Then she responds by bearing testimony four times by Allaah that he is lying in his accusation against her, and when she bears testimony for the fifth time, she must invoke the wrath of Allaah upon herself if he is telling the truth. When this *li’aan* between them has been completed, he is no longer subject to the punishment for slander, and she is no longer subject to the punishment for zinaa or to detention. By virtue of this *li’aan*, any child involved does not belong to the husband, and the couple is forever separated.

Allaah says (interpretation of the meaning):

“Indeed Allaah has heard the statement of her (Khawlah bint Tha‘labah) that disputes with you (O Muhammad) concerning her husband (Aws bin As-Saamit), and complains to Allaah. And Allaah hears the argument between you both. Verily, Allaah is All-Hearer, All-Seer.

Those among you who make their wives unlawful to them by Zihaar (i.e., by saying to them “You are like my mother’s back,”) they cannot be their mothers. None can be their mothers except those who gave them birth. And verily, they utter an ill word and a lie. And verily, Allaah is Oft-Pardoning, Oft-Forgiving.

And those who make unlawful to them (their wives) by Zihaar and wish to free themselves from what they uttered, (the penalty) in that case is the freeing of a slave before they touch each other. That is an admonition to you (so that you may not repeat such an ill thing). And Allaah is All-Aware of what you do.

And he who finds not (the money for freeing a slave) must fast two successive months before they both touch each other. And he who is unable to do so, should feed sixty Masaakeen (poor). That is in order that you may have perfect faith in Allaah and His Messenger. These are the limits set by Allaah. And for disbelievers, there is a painful torment."

[al-Mujaadilah 58:1-4]

Here Allaah mentions the ruling on al-zihaar, and states that it is evil and false speech. If the husband wants to resume having intercourse with his wife after forbidding it for himself in a clear statement or by saying that she is to him like the back of his mother, he has to free a believing slave before they can have intercourse again. If he cannot do that, then he has to fast for two consecutive months before they can have intercourse again. If he is not able to do that then he has to feed sixty poor persons.

Fath al-Raheem al-Malik al-'Allaam fi 'Ilm al-'Aqaa'id wa'l-Tawheed wa'l-Akhlaaq wa'l-Ahkaam al-Mustanbatah min al-Qur'aan by Shaykh 'Abd al-Rahmaan ibn Naasir al-Sa'di, p. 147
